

AMENDED IN SENATE MAY 3, 2005
AMENDED IN SENATE APRIL 25, 2005
AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 422

Introduced by Senator Simitian

February 17, 2005

An act to amend Sections 116.240 and 116.940 of, and to add Sections 116.221, 116.222,, and 116.232 to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Simitian. Small claims court: jurisdiction.

(1) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions.

This bill would increase the small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed \$7,500, with specified exceptions. The bill would also require, in small claims court actions to enforce the payment of a debt, that the statement of calculation of liability separately state the original debt, and other payments to the debt, as specified. The bill would increase the filing fee for cases in which the jurisdictional limit exceeds \$5,000 to \$25, as specified, with the increase in fees to be used for advisory services.

(2) Existing law authorizes small claims court cases to be heard by temporary judges who are members of the State Bar, and who are sworn and empowered to act in this capacity.

The bill would require temporary judges, prior to serving in small claims court, to take a course of study, offered by the Department of Consumer Affairs, covering specified state and federal laws.

(3) Existing law requires each small claims court advisory service, offered without charge to litigants and potential litigants, to provide individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

This bill would require the topics covered by individual personal advisory services to include preparation of small claims court filings, filings, procedures, including procedures related to the conduct of the hearing, collection of small claims court judgments, and information about the availability of interpreter services. The bill would include related findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares ~~all of the~~
2 ~~following:~~
3 ~~(1) The~~ that the quality of and access to justice in small claims
4 court in California varies widely from jurisdiction to jurisdiction.
5 The small claims court system should be improved in the
6 following ways:
7 ~~(A)~~
8 (1) Commissioners and temporary judges adjudicate many
9 complex issues including, but not limited to, consumer law, rent
10 deposit law, tort law, and contract law. In its report to the Judicial
11 Council on the California three track civil litigation study,
12 Consumers Union maintains that paid court commissioners, “see
13 the full panoply of issues raised in small claims cases, and part of
14 their job is to become knowledgeable in the areas of law likely to
15 arise in small claims court. Further, they have the time and duty
16 to research issues of law likely to arise in small claims
17 court...[and those] that arise with which they are not familiar.”
18 The potential knowledge gap between temporary judges and
19 commissioners should be narrowed through better and timely
20 training.
21 ~~(B)~~

1 (2) For advisors, improvements need to be made in the
2 availability of in-person assistance and in the knowledge and
3 experience of the advisors.

4 (C)

5 (3) Qualified interpreters are not available in many
6 jurisdictions in California. With the increasing linguistic
7 diversity in California's population in recent decades, the need
8 for interpreter services has grown proportionately.

9 (b) (1) It is the intent of the Legislature to raise the
10 jurisdictional limit for natural persons only.

11 (2) It is the intent of the Legislature that the jurisdictional limit
12 of subdivision (a) of Section 166.231 of the Code of Civil
13 Procedure and subdivision (c) of Section 116.220 of the Code of
14 Civil Procedure shall not be changed by this legislation.

15 (3) It is the intent of the Legislature that jurisdictional limits
16 shall not be raised again, particularly with respect to individuals
17 as defendants, until services are funded at a level sufficient to
18 provide all of the following:

19 (A) In-person advice from advisors who are legal
20 professionals.

21 (B) Staffing levels that are adequate to meet the demand, and
22 also adequate to permit the small claims court advisory service to
23 provide services to both parties in a small claims court case
24 without conflicts of interest.

25 (C) Professional, well-trained decisionmakers, in small claims
26 courts in all counties in California, who meet standards
27 established by the Judicial Council.

28 (D) Interpreter services shall be made available to
29 non-English-speaking litigants.

30 (4) It is the intent of the Legislature that ~~commissioners and~~
31 temporary judges should be knowledgeable of state and federal
32 consumer laws, rent deposit law, the state and federal Fair Debt
33 Collection Practices Acts, the federal Truth in Lending Act, the
34 federal Fair Credit Billing Act, the federal Electronic Fund
35 Transfer Act, tort law, online purchasing law and other contract
36 law, defenses to contract claims, and defenses to debts.

37 SEC. 2. Section 116.221 is added to the Code of Civil
38 Procedure, to read:

39 116.221. In addition to the jurisdiction conferred by Section
40 116.220, the small claims court has jurisdiction in an action

1 brought by a natural person, if the amount of the demand does
2 not exceed seven thousand five hundred dollars (\$7,500), except
3 for actions otherwise prohibited by subdivision (c) of Section
4 116.220 or subdivision ~~(b)~~ (a) of Section 116.231.

5 SEC. 3. Section 116.222 is added to the Code of Civil
6 Procedure, to read:

7 116.222. If the action is to enforce the payment of a debt, the
8 statement of calculation of liability shall separately state the
9 original debt, each payment credited to the debt, each fee and
10 charge added to the debt, each payment credited against those
11 fees and charges, all other debits or charges to the account, and
12 an explanation of the nature of those fees, charges, debits, and all
13 other credits to the debt, by source and amount.

14 SEC. 4. Section 116.232 is added to the Code of Civil
15 Procedure, to read:

16 116.232. (a) The filing fee for cases in which the
17 jurisdictional limit exceeds five thousand dollars (\$5,000) shall
18 be twenty-five dollars (\$25). The five-dollar (\$5) increase above
19 the filing fee set forth in subdivision (a) of Section 116.230 shall
20 be used to enhance advisory services.

21 (b) This fee increment shall supplement, not replace, existing
22 funding sources for advisory services.

23 (c) Notwithstanding the provisions of this section, the law
24 library fee in effect in the jurisdiction in which a small claims
25 case is filed shall be applicable to all civil filings in which the
26 plaintiff's claim is five thousand dollars (\$5,000) or more.

27 SEC. 5. Section 116.240 of the Code of Civil Procedure is
28 amended to read:

29 116.240. (a) With the consent of the parties who appear at
30 the hearing, the court may order a case to be heard by a
31 temporary judge who is a member of the State Bar, and who has
32 been sworn and empowered to act until final determination of the
33 case.

34 (b) Prior to serving as a temporary judge in small claims court,
35 and at least every three years thereafter, each temporary judge
36 shall take the course of study offered by the Department of
37 Consumer Affairs. The course shall include, but not be limited to,
38 state and federal consumer laws, rent deposit law, the state and
39 federal Fair Debt Collection Practices Acts, the federal Truth in
40 Lending Act, the federal Fair Credit Billing Act, the federal

1 Electronic Fund Transfer Act, tort law, contract law, including
2 defenses to contracts and defenses to debts.

3 SEC. 6. Section 116.940 of the Code of Civil Procedure is
4 amended to read:

5 116.940. (a) Except as otherwise provided in this section or
6 in rules adopted by the Judicial Council, which are consistent
7 with the requirements of this section, the characteristics of the
8 small claims advisory service required by Section 116.260 shall
9 be determined by each county in accordance with local needs and
10 conditions.

11 (b) Each advisory service shall provide the following services:

12 (1) Individual personal advisory services, in person or by
13 telephone, and by any other means reasonably calculated to
14 provide timely and appropriate assistance. The topics covered by
15 individual personal advisory services shall include, but not be
16 limited to, preparation of small claims court filings, procedures,
17 including procedures related to the conduct of the hearing,
18 collection of small claims court judgments, and information
19 about the availability of interpreter services.

20 (2) Recorded telephone messages may be used to supplement
21 the individual personal advisory services, but shall not be the sole
22 means of providing advice available in the county.

23 (3) Adjacent counties may provide advisory services jointly.

24 (c) In any county in which the number of small claims actions
25 filed annually is 1,000 or less as averaged over the immediately
26 preceding two fiscal years, the county may elect to exempt itself
27 from the requirements set forth in subdivision (b). This
28 exemption shall be formally noticed through the adoption of a
29 resolution by the board of supervisors. If a county so exempts
30 itself, the county shall nevertheless provide the following
31 minimum advisory services in accordance with rules adopted by
32 the Judicial Council:

33 (1) Recorded telephone messages providing general
34 information relating to small claims actions filed in the county
35 shall be provided during regular business hours.

36 (2) Small claims information booklets shall be provided in the
37 court clerk's office of each superior court, the county
38 administrator's office, other appropriate county offices, and in
39 any other location that is convenient to prospective small claims
40 litigants in the county.

1 (d) The advisory service shall operate in conjunction and
2 cooperation with the small claims division, and shall be
3 administered so as to avoid the existence or appearance of a
4 conflict of interest between the individuals providing the
5 advisory services and any party to a particular small claims
6 action or any judicial officer deciding small claims actions.

7 (e) Advisors may be volunteers, and shall be members of the
8 State Bar, law students, paralegals, or persons experienced in
9 resolving minor disputes, and shall be familiar with small claims
10 court rules and procedures. Advisors may not appear in court as
11 an advocate for any party.

12 (f) Advisors, including independent contractors, other
13 employees, and volunteers have the immunity conferred by
14 Section 818.9 of the Government Code with respect to advice
15 provided as a public service on behalf of a court or county to
16 small claims litigants and potential litigants under this chapter.